IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No. 198 of 2002

Gulzar Singh Cheema …….Appellant.

Vs.

State of Uttaranchal ……..Respondent.

Sri A.S. Gill & Sri Mahendra Pal learned counsel for the appellant.
Sri G. S. Sandhu learned A.G.A.

Hon'ble J.C.S. Rawat, J.)

This criminal jail appeal has been filed under section 374 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 13.8.2002 passed by the learned Addl. Sessions Judge, Haldwani, District Nainital in S.T.No.36/1994 convicting the appellant under section 307 IPC and sentencing him to undergo RI for seven years and fine of Rs.5000/- and in default of payment of fine the appellant to undergo RI for six months. However, Kalu @ Pammi @ Paramjeet Singh and Uttam were acquitted from the charge under section 307 read with section 34 IPC.

2. Brief facts of the case are that there was litigation between the injured-Dharshan Singh (PW-1) and the appellant-Gulzar Singh Cheema. On 10.11.1991 at about 9:30PM Niranjan Singh-brother of the complainant who had an injury on his leg came outside the door with the help of complainant-Dharshan Singh and his mother-Smt. Amar Kaur. At that time, appellant alongwith Kalu @ Pammi @ Paramjeet Singh and Uttam came there armed with gun and countrymade pistol. The appellant threatened them and all of a sudden the appellant fired the gunshot upon Niranjan Singh which hit the left leg of Niranjan Singh. On being made hue and cry, Ratan Singh-driver (PW-2) immediately came at the spot and the accused persons ran away from the spot. The accused persons were recognized in the electric light.

3. Darshan Singh (PW-1) lodged written report (Ex.ka.1) at P.S. Rudrapur at about 10:30PM on the same day against the accused persons. On the basis of the written report the FIR (Ex.ka.6) was lodged

and a case under section 307 IPC was registered against the appellant and Kalu @ Pammi @ Paramjeet Singh and Uttam. The investigation was entrusted to Subash Sharma-S.I.(PW-7) He visited the spot and prepared the site plan (Ex.ka.7). The investigating officer – Subash Sharma (PW-7) investigated the case as usual which culminated into the submission of the chargesheet.

4. The charge was framed under section 307 IPC against the appellant-Gulzar Singh Cheema and against other accused persons namely Kalu @ Pammi @ Paramjeet Singh and Uttam under section 307 IPC read with section 34 IPC.

5. In order to prove its case the prosecution examined as many as seven witnesses. Darshan Singh (PW-1), the brother of the injured, was the eye-witness of the incident. Ratan Singh (PW-2), who was the driver, reached at the spot on hearing the hue and cry. Yashpal Sharma (PW-3) had written the report about the incident. Dr. Jagmal Singh (PW-4) proved the X-ray report of the injured. Dr. A.K. Rana (PW-5) conducted the medical examination of the injured. Smt. Amar Kaur (PW-6) who was the mother of the injured stated that she was inside the house when the incident took place. Subash Sharma (PW-7), who was the I.O. of the case, investigated the case as usual which culminated into the submission of the chargesheet.

6. The learned Addl. Sessions Judge on the basis of his appreciation of the evidence held that the prosecution had proved its case against the appellant beyond reasonable doubt and sentenced him to undergo RI for seven years and fine of Rs.5000/-. The learned Addl. Sessions Judge further held that the prosecution has not proved its case against the other accused namely Kalu @ Pammi @ Paramjeet Singh and Uttam and they were acquitted from the charge under section 307 read with section 34 IPC.

7. I have heard Sri A.S. Gill and Sri Mahendra Pal learned counsel for the appellant and Sri G.S. Sandhu learned A.G.A. I have also gone through the evidence and material on record.

8. At the outset, I would like to mention that Niranjan Singh was not produced before the court as a witness. Darshan Singh (PW-1) has stated in his evidence that since his brother Niranjan Singh was murdered soon after the incident, hence the evidence of Niranjan Singh could not be produced before the court. Now, I have to consider whether the prosecution witnesses are credible and trustworthy or not. Darshan Singh (PW-1), who is the brother of the injured, has stated that his brother Niranjan Singh had already an injury on his leg. When he brought his brother Niranjan Singh at the door from the house the appellant and other accused persons came there. The appellant fired gunshot upon his brother which hit his left leg. He further stated in his cross examination that no pellet hit the door of the house. However, there is no evidence that Smt. Amar Kaur (PW-6) and Darshan Singh (PW-1), who were standing near the door alongwith Niranjan Singh received any gunshot. It is revealed that the appellant fired the gunshot at a distance of about 26 feet. Thus, the evidence of Darshan Singh (PW1) is not credible and cogent because Darshan Singh (PW1) had stated that the appellant fired the gunshot upon the injured from a distance of 26 feet but the pellet only hit at the left leg of the injured. There is no disbursal of the pellets at the spot. The fire was made by the gun. If the appellant fired the gunshot from a distance of 26 feet it is quite natural that there will be disbursal of the pellet which would definitely hit the door or the other persons standing nearby the injured. This fact shows that the evidence of Darshan Singh (PW-1) is not believable. Secondly, Darshan Singh (PW1) had stated in his cross examination that the injured fell down and there were blood stains at the spot. The I.O. did not take the samples of blood stained earth from the place of incident. There is no evidence from the side of the prosecution that the blood stained earth was taken from the spot. Failure of non-production of samples of blood stained from the spot creates a doubt about the place of incident as has been alleged by the prosecution. Thirdly, Darshan Singh (PW1) had stated in his cross examination that the injured was admitted to the hospital and remained in the hospital for two-three days and the pellets were taken out from the person of the injured. He stated that he was not aware as to whether the bullets

recovered from the person of injured were taken into possession by the police or not. Dr. A.K.Rana (PW-5) had stated in his evidence that there were no pellets inside the injury and no pellet was taken into possession from the body of the injured. Darshan Singh (PW1) has stated in his cross examination that the blood stained pant was taken into possession by the I.O. but the I.O. has not produced the same before the court. The non-production of the blood stained pant also creates a doubt as has been alleged by the prosecution. Thus, the evidence of Darshan Singh (PW1) does not inspire confidence.

9. The prosecution also adduced the evidence of Ratan Singh (PW-2), a driver, stated that he was inside the house when the incident took place. On hearing the noise of firing he came outside from his house where he found that Niranjan Singh had received a gunshot injury at his leg. Darshan Singh (PW1) and Niranjan Singh told him that the appellant fired gunshot upon the injured. Ratan Singh (PW-2) was declared hostile and did not support the prosecution case.

10. The prosecution also adduced the evidence of Smt. Amar Kaur (PW-6) – mother of the injured and Darshan Singh (PW-1). Smt. Amar Kaur (PW-6) had not supported the prosecution story. She was declared hostile. Being the mother of the injured her statement carried much weight. It is supposed that the mother of the injured would never tell a lie. Thus, the evidence of Smt. Amar Kaur (PW-6) clearly belies the prosecution story.

11. Yashpal Sharma (PW-3) scribed the written report (Ex.ka.1) on the dictation of Darshan Singh (PW-1). Yashpal Sharma (PW-3) had stated in his evidence that the report Ex.ka.1 was written by him on the dictation of the police. The witness was declared hostile and did not support the prosecution case.

12. Dr. A.K.Rana (PW-5) examined the injured and found only one injury on the person of Niranjan Singh-injured. Both the reports of Dr. A.K.Rana (PW-5) Ex.ka.4 & Ex.ka.5 clearly reveal that it is not inconsonance with the ocular testimony. It is the admitted case of the

prosecution that the injured had already an injury on his leg which was two-three days old. It is also the prosecution case that one fire arm injury was caused to him. Meaning thereby the injured had two injuries on his person at the time of his medical examination. But the evidence of Dr. A.K.Rana (PW-5) reveals that he had only one injury. Thus the evidence of the medical officer does not inspire confidence. Dr. Jagmal Singh (PW-4) had not stated in his report that there was any fracture on the person of the injured whereas Dr. A.K.Rana (PW-5) came forward with a report that the injured had a fracture on his leg. Thus the report itself creates a doubt about its credibility. The ocular testimony is also inconsistent with the medical evidence.

13. On consideration of the totality of facts, circumstances, evidence and the material on record, I am of the considered opinion that the appellant could not have been held guilty of committing the offence with which he had been charged. The learned trial court erred in holding that the prosecution had established the guilt against the appellant beyond reasonable doubt. The appeal thus succeed and is liable to be allowed accordingly.

14. The appeal is thus allowed. Conviction and sentence awarded to the appellant per judgment dated 13.8.2002 passed by the Addl. Sessions Judge, Haldwani, District Nainital are set-aside. The appellant is acquitted of the charge levelled against him. He shall be released forthwith, if not wanted in any other case.

15. Let the record be sent back to the court concerned for necessary action and the compliance report to be submitted within two months.

(J. C. S. Rawat, J.)

Dated 25.8.2004

Rawat